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US SENATE
COMMITTEE ON INTELLIGENCE SELECT COMMITTEE

Camille 174

OLC #77-3714

8 SEP 1977

MEMORANDUM FOR: Director of Central Intelligence

FROM : George L. Cary
Legislative Counsel

SUBJECT : Response to your Request for Comments on
Items in the SSCI Annual Report

REFERENCE : Your Memorandum of 22 August; Subject: SSCI
Annual Report

1. (U) Action Requested: None; for information only.

2. (U) Background: This memorandum is responsive to your request for advice on the several points in the Senate Select Committee on Intelligence Annual Report which you cited in the reference. The individual items are discussed in the attachment.



George L. Cary

Attachment

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ATTACHMENT TO
MEMORANDUM FOR THE DIRECTOR OF CENTRAL INTELLIGENCE
RESPONSE TO YOUR REQUEST FOR COMMENTS ON
ITEMS IN THE SSCI ANNUAL REPORT

1. (C) Per paragraph a, referring to page 9 of the SSCI Annual Report: "The Subcommittee (on Intelligence and the Rights of Americans) is also studying current CIA foreign intelligence activities"

2. (U/IUO) Per paragraph b, referring to page 11 of the SSCI Annual Report: "The following case studies which represent a variety of issues have been chosen from a series of studies (by the Subcommittee on Collection, Production and Quality of Intelligence):

"(3) Soviet Strategic Weapons Developments: This study will be a broad examination of Soviet strategic weapons estimates....:"

a. The study is in abeyance for the moment. Subcommittee staffer Ted Ralston, who is conducting the study, has been spending most of his time on an examination of SALT verification. He does not have a final completion date for either study.

b. Earlier, Ralston had extensive interviews with those involved in drafting the strategic estimates, and he prepared the SSCI study on the A-B Team experiment. CIA's comments on that study have been given to the Select Committee.

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3. (S) Per paragraph c, referring to page 18 of the SSCI Annual Report: "...the committee receives, on a semiannual basis, status reports on all covert action programs and projects."

a. There is no formal semiannual submission to the SSCI at this time, nor any formal requirement for it known to CIA.

b. A suggestion for a semiannual report was made by Senator Gary Hart (D., Col.) at the 23 June 1976 confirmation hearing of E. Henry Knoche to be DDCI. Per page 28 of the hearing record, Senator Hart asked if Mr. Knoche "agreed" that the DCI should submit a semiannual report on all CA projects to the Committee. Mr. Knoche replied only that "I want to work closely with the new Committee to satisfy its information needs. I am confident that satisfactory arrangements can be reached with the Committee in this regard."

d. In practice, the DCI has appeared before the Committee at least semiannually to discuss recent Presidential findings under Section 662, most recently on 18 April 1977. On these occasions, [] reports and a status report on all extant CA programs are provided, thus keeping the Committee fully and currently informed on these programs. We believe this arrangement is superior to a requirement for regularly submitted written reports on CA programs.

4. (S) Per paragraph c, referring to page 20 of the SSCI Annual Report: "The full NSC now conducts, twice a year, a review of the 'continued appropriateness of ongoing covert operations:'"

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a. The requirement for a semiannual report to the NSC is established in E.O. 11905, Section 3, subparagraph (a) (3) which reads: "The National Security Council shall conduct a semiannual review of intelligence policies and of ongoing special activities in support of national Foreign policy objectives. These reviews shall consider the needs of users of intelligence and the timeliness and quality of intelligence products and the continued appropriateness of special activities in support of national Foreign policy objectives. The National Security Council shall consult with the Secretary of the Treasury and such other users of intelligence as designated by the President as part of these reviews."

b. Instructions on the procedures and schedule of semiannual reports to the NSC were contained in guidelines issued by the Chairman of the Operations Advisory Group (OAG) (the predecessor of the Special Coordination Committee (SCC)) issued on 19 July 1976. The OAG Chairman's instructions stated: "CIA will submit reports to the OAG on its special activities for consideration at the NSC semiannual reviews of foreign intelligence activities. The Department of Defense will submit similar reports on its activities which are under the jurisdiction of the OAG. The Executive Secretary will provide specific guidance on the content and format of these reports as well as due dates for OAG review. In general, these semiannual reports will be broad-based and highlight significant problems and issues. In addition, the OAG will receive from CIA and the Department of Defense annual consolidated reports on all ongoing activities and programs under their jurisdiction. These reports will include specific performance data on all continuing special activities, sensitive intelligence collection activities, and other operations and programs under the OAG's jurisdiction. These reports will constitute the vehicle for an annual periodic review and their acceptance by the OAG will constitute authority for continuing approved activities. The Executive Secretary will provide guidance on specific format and due dates."

c. The first semiannual report to the NSC was reviewed by the OAG on 8 November 1976 and recommended for forwarding to the President. Since that time, the SCC has not tasked the CIA or other agencies or departments of the Intelligence Community to submit a semiannual report to the NSC which is the procedure established under the Chairman's guidelines quoted above.

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d. In this regard, when recently asked to review the draft revision of E.O. 11905, we noted that the requirements in E.O. 11905 requiring semiannual reporting to the NSC and annual reporting to the SCC on covert action operations were overlapping and duplicatory. We recommended that the requirement for a semiannual report to the NSC be abolished in favor of a single annual report serving the requirements of both the NSC and the SCC. We assume the outcome of this recommendation will determine the due date of the next report to the NSC/SCC. If our recommendation for an annual report is agreed to, we assume that the next report to the SCC will be in February of next year.

5. (C) Per paragraph d, referring to page 21 of the SSCI Annual Report to the plan of the Committee, through the Subcommittee on Secrecy, Disclosure and Classification to "conduct an in-depth study of the classification system, examining various departmental procedures in use in the Executive Branch:"

a. Since the Subcommittee on Secrecy and Disclosure was established in early 1977, the two principal staff members, Mark Gitenstein (for Chairman Biden), and David Bushong (for Vice-Chairman Pearson) have been accumulating a data base and developing an understanding of Intelligence Community security practices and problems. Approximately 25 security officials throughout the Intelligence Community have been interviewed.

b. Subcommittee Chairman Biden will convene the Subcommittee before the end of the first session of this Congress to hear the report of the staff. Present plans call for the Subcommittee to submit a report to the full SSCI on present security procedures in the Intelligence Community, probably including preliminary recommendations. Early in 1978 the Subcommittee would hold a series of hearings--lasting about a week and including both open and closed sessions--on security issues. Topics likely to be included:

(1) The new Executive Order expected on classification.

(2) Compartmentation practices.

(3) Adequacy of existing law protecting information including espionage laws and the DCI's sources and methods authority.

(4) The effect of leaks and what can be done to prevent them.

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6. (S) Per paragraph e, your question was: "How do we feel about the possibility of putting paramilitary activities under the Warpowers Act (page 31)?"

a. The SSCI Annual Report, on page 30-31 states:

"Covert paramilitary activities such as those conducted in Laos are also under study (by the Subcommittee on Charters and Guidelines). One possible reform under consideration is bringing such activities under procedures similar to those of the War Powers Act." (Emphasis added.)

b. The War Powers Act requires that, in the absence of a declaration of war, the commitment of U.S. Armed Forces must be reported by the President to Congress within 48 hours. The report must be submitted in writing to the Speaker of the House of Representatives and to the President pro tempore of the Senate. The report must set forth (a) the circumstances which warranted the action, (b) the constitutional and legislative authority, and (c) the estimated scope and duration of the hostilities. Although there are other reasons why the Department of Defense cannot conduct covert paramilitary operations, the War Powers Act precludes such actions from the legal standpoint. The Department of Defense could, however, conduct Entebbe-type rescue operations, which need to be kept secret only until the shooting starts, with Congressional notification being given once the immediate need for secrecy is past.)

c. Putting covert paramilitary activities under the War Powers Act would be redundant to the existing procedure of notifying the SSCI and other committees on all covert action operations. Further, it would expand knowledge of covert paramilitary operations and, in all probability, eliminate paramilitary activity as a viable foreign policy option.

d. If fall-back positions are required, it would not be unreasonable for the War Powers Act to apply to CIA only if United States citizens are to be involved directly in combat (except in emergency life saving situations). On several occasions in the past, we have used proprietary or direct-hire employees in combat, but we do not foresee this being either required or possible in the future. Since the SSCI report refers specifically to paramilitary operations "such as Laos," it also might be possible to establish duration or size limitations beyond which covert paramilitary activities must be reported under the War Powers Act. Actually establishing or defining such limitations could be troublesome, but they would be in keeping with our philosophy that the proper function of CIA paramilitary capabilities is a limited input to buy time for other foreign policy options.

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